

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In Re: Kimberly B. Lee, :
Debtor(s) : Chapter 13
: Case No. 13-11502-jkf

**DEBTOR'S RESPONSE TO MOTION OF U.S. BANK NATIONAL
ASSOCIATION, TRUSTEE FOR THE PHFA FOR RELIEF FROM THE
AUTOMATIC STAY UNDER § 362**

To the Honorable Jean K. FitzSimon:

1-4. Admitted.

5. Admitted in part, denied in part. It is admitted that the continuation of foreclosure proceedings were stayed by the failing of the instant chapter 13 case. All other averments are denied.

6. Admitted. It is admitted that the debtor is delinquent in making her post-petition maintenance payments under the terms of her confirmed plan and the mortgage note.

7. Denied. It is specifically denied that under ¶ 8 of the FHA mortgage, and the federal law it refers to, that movant may seek the \$850.00 in fees and \$176.00 in legal costs from the Debtor and without specific order of this Court. HUD Guidelines only allow attorney fees for actions other than foreclosure, including bankruptcy related actions, where permitted by the security instrument, actually incurred, and **in defense of any suit or proceeding** wherein the mortgagee shall be made a party. 24 C.F.R. 203.552(a)(13); *Mortgagee Letter 1993-30 (September 28, 1993)*. Because s motion for

relief is not “in defense of any suit or legal proceeding,” Movant may file a claim with HUD regarding the fees, but may not collect them from the debtor.

8. Denied. While it is admitted that debtor is substantially behind on post-petition mortgage payments, debtor denies that the \$27,712.72 figure is accurate and that fees and costs are owed pursuant to her response to ¶ 7 of the motion.

9. Admitted.

10. Denied. The averments of ¶ 10 of the motion are denied as conclusions of law.

11. Denied. As set forth in her responses to the averments of ¶¶ 7-8 of the motion, Movant is specifically limited in the fees and costs that may be collected from debtor under ¶ 8 of the mortgage and supporting and explanatory federal regulations.

WHEREFORE, the Debtor requests that this Court deny the motion without prejudice and/or enter any other relief that is just and proper as the Debtor’s property is necessary to her reorganization.

Date: October 17, 2016

Signed: /s/ Devon E. Sanders
Attorney for the Debtor(s)

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ORDER

It is **ORDERED** that the Motion of U.S. Bank National Association, Trustee for the PHFA for Relief from the Automatic Stay under § 362 is **DENIED**.

Date:

HON. JEAN K. FITZSIMON
U. S. BANKRUPTCY JUDGE

cc:

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CERTIFICATION OF SERVICE

I, Devon E. Sanders, Counsel for Debtor(s) herein, certify that I served a copy of Debtor's Response to Motion of U.S. Bank National Association, Trustee for the PHFA for Relief, by electronic mail, on the date below to the following parties:

William C. Miller, Esq.
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Date: October 17, 2016

Signed: /s/ Devon E. Sanders
Attorney for the Debtor(s)

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